

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION**

United States of America,)	
)	
Plaintiff,)	Civil Action No.: 4:99-383-CWH
)	
vs.)	
)	
Daronne Shaw,)	ORDER
)	
Defendant.)	
_____)	

On February 22, 2000, the defendant pleaded guilty to conspiracy to distribute and to possess with intent to distribute cocaine base. The Court sentenced the defendant to 240 months in prison followed by 5 years supervised release. On December 18, 2002, the Fourth Circuit Court of Appeals affirmed the defendant's conviction and sentence. On July 16, 2007, the government moved to reduce the defendant's sentence for substantial assistance. On September 17, 2007, the Court granted the government's motion and reduced the defendant's sentence to 120 months in prison and ruled that all other provisions of the sentence remain as imposed. On September 19, 2007, the amended judgment was entered.

On January 9, 2006, the defendant moved to preserve a Booker claim. The defendant claims that his sentence violated the Sixth Amendment. Only 28 U.S.C. § 2555 authorizes a district court to grant the relief that the defendant seeks in this motion. Accordingly, the Court hereby advises the defendant of its intent to recharacterize the motion as one pursuant to § 2255. *See United States v. Emmanuel*, 288 F.3d 644, 649 (4th Cir. 2002) (requiring notice to a defendant before a district court, *sua sponte*, converts a motion to one under § 2255).

The defendant is directed to take notice of the restrictions on successive or second

motions as set forth in § 2244(a) and § 2255. A defendant must be careful to include all grounds for relief in an initial § 2255 motion because the ability to raise other grounds later have been limited by the following provisions:

(a) No circuit or district judge shall be required to entertain an application for a writ of habeas corpus to inquire into the detention of a person pursuant to a judgment of a court of the United States if it appears that the legality of such detention has been determined by a judge or court of the United States on a prior application for a writ of habeas corpus, except as provided in section 2255.

A second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals to contain—

(1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or

(2) a new constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

28 U.S.C. § 2255.

The Court therefore orders the defendant to respond to the Court's proposed recharacterization within 30 days from the date of the filing of this order. Failure to respond within the allotted time will result in the original motion being recharacterized as a § 2255 motion.

AND IT IS SO ORDERED.

October 24, 2007
Charleston, South Carolina



C. WESTON HOUCK
UNITED STATES DISTRICT JUDGE